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BUREAU OF AUDIT

April 24, 2020

By Electronic Delivery

Commissioner Lorelei Salas
NYC Department of Consumer
and Worker Protection
42 Broadway, 8th Floor
New York, NY 10007

Re: Letter Report on the Department of Consumer and Worker Protection's Licensing and Oversight of Sightseeing Bus Operators and Guides (FP19-101AL)

Dear Commissioner Salas:

This Letter Audit Report concerns the New York City (City) Comptroller's audit of the Department of Consumer and Worker Protection's (DCWP's) licensing and oversight of sightseeing bus operators and guides. The objective of the audit was to determine whether DCWP: 1) charged applicants license and renewal fees in accordance with the New York City Administrative Code (NYC Administrative Code) and the Rules of the City of New York; 2) maintained adequate controls over and accounted for license and exam fees; and 3) ensured that inspections of sightseeing buses are conducted in accordance with the agency's policies and procedures.

Background

In 1969, the City Council created DCWP, then known as the Department of Consumer Affairs, to protect the public from deceptive business practices. DCWP licenses approximately 81,000 businesses in more than 50 industries and enforces key consumer protection, regulatory, and workplace laws.¹

Businesses that operate sightseeing buses (sightseeing bus operators) and individuals who work as sightseeing guides are among the businesses and occupations regulated by DCWP. The NYC Administrative Code requires sightseeing bus operators and guides to obtain a license from DCWP to operate in the City.

¹ In January 2019, Mayor Bill de Blasio announced the renaming of the Department of Consumer Affairs to the Department of Consumer and Worker Protection and the agency's expanded mandate to enforce workplace laws. A bill that would have changed the agency's name in various City statutes was introduced in the New York City Council (Int. No. 1609-2019) in 2019 but was not enacted. Thus, the agency's name in the New York City Charter and other City laws as of the date of this report is the Department of Consumer Affairs. The agency refers to itself in official correspondence and on its public website as the New York City Department of Consumer and Worker Protection.

Sightseeing bus operators must apply for a license and pay a \$100 fee for each bus in operation. Sightseeing guides must also apply for a license and pay a \$50 license fee and in addition must pay a \$50 examination fee and pass an examination² that DCWP administers. Both categories of licensees must renew their licenses every two years at a fee of \$100 per bus for sightseeing bus operators and \$50 for each licensed guide. Applications can be filed online or in-person at the DCWP Licensing Center or the New York City Small Business Support Center. All fees are due upon application submission and can be paid by check, money order, or credit card.

Sightseeing bus operators and sightseeing guides must submit a basic license application for the initial license and a renewal license application biennially thereafter. The initial sightseeing bus operator's license requires that the applicant submit a United States Environmental Protection Agency (USEPA) Engine Conformity Affirmation package, which includes specific documents regarding each bus in operation with a diesel-powered engine.³ A sightseeing bus operator applying for a renewal license does not need to submit the USEPA Conformity Affirmation unless the operator is adding a new bus to its fleet or has changed the engine on a bus.

Licensed sightseeing buses must be inspected every six months by the New York State Department of Transportation (DOT). Additionally, licensed sightseeing buses must be inspected by DCWP every four months to ensure that buses comply with DCWP's policies and the NYC Administrative Code. Generally, sightseeing bus operators bring their sightseeing buses to DCWP's Bureau of Weights and Measures Testing Station located at 245 Meserole Avenue, Brooklyn, NY, for inspection every four months.⁴ Specifically, DCWP inspectors check buses for: proper signage that includes rates, an affixed DCWP license plate with current date tag, cleanliness, and headphone-limited sound reproduction systems for open-air buses. Failure to comply with inspection requirements will result in a denial of license or license renewal. Additionally, open-air sightseeing buses not equipped with headphone-limited sound reproduction systems are subject to fines.

In the Comprehensive Annual Financial Report of the Comptroller for Fiscal Year 2018 (CAFR), DCWP reported revenue from licenses and other services and fees (e.g., exam fees) of \$10,368,975 out of total revenue of \$36 million. During Fiscal Year 2018, DCWP licensed 199 sightseeing buses for 10 bus operators and 2,974 sightseeing guides, and the revenue consisting of fees DCWP collected for the associated licenses, including renewal and exam fees, constituted approximately \$198,000 of the total reported in CAFR.⁵

² If a sightseeing guide applicant fails the exam twice, the applicant must pay the exam fee again in order to retake the exam.

³ DCWP requires that sightseeing bus operators applying for initial licenses submit among other requirements a United States Environmental Protection Agency (USEPA) Engine Conformity Affirmation, where the bus operator affirms that the diesel-powered buses listed in the affirmation are powered by engines covered by a Certificate of Conformity issued by USEPA. For each engine listed on the affirmation, each of which must be identified by serial number, the operator is required to attach (1) a letter from the engine manufacturer stating that the engine serial number is included in a specified engine family and (2) a copy of the USEPA Certificate of Conformity for the specified engine family.

⁴ In cases where the bus operator has numerous buses that need inspection, DCWP has its inspectors conduct the inspections at the operator's business location.

⁵ The CAFR reports the total revenue DCWP received from license application fees from more than 50 industries. In order to identify the amount of revenue DCWP collected from sightseeing bus operators and guides' license fees and exam fees, DCWP provided a Payment Analysis Report that broke down its revenue by industries and fees received. The total revenue reported in the DCWP Payment Analysis Report is \$36.4 million, which we were able to trace to the City's Financial Management System and is approximate to the \$36 million reported in CAFR.

Audit Findings

Our audit found that DCWP generally charged license and renewal fees in accordance with the NYC Administrative Code and the Rules of the City of New York, maintained adequate controls over and accounted for license and exam fees, and ensured that inspections of sightseeing buses are conducted in accordance with the agency's policies and procedures. However, we identified some internal control weaknesses in DCWP's maintenance of documents required for the issuance and renewal of sightseeing bus licenses and in its oversight of the operations of the sightseeing buses and guides. The findings are detailed below.

Adequate Controls over Fees and Inspections

We found that DCWP correctly accounted for the revenue it received in Fiscal Year 2018. Specifically, we found that DCWP charged and collected the appropriate license fees, endorsed checks and money orders upon receipt, deposited the collected funds in the bank account on a daily basis, and accurately reported revenue in the City's Financial Management System (FMS). There was segregation of responsibilities in the fee collection process, including the reconciliation of receipts, and in the safeguarding of funds. As for sightseeing bus inspections, based on our observation of inspections at the agency's Meserole Avenue facility and our review of inspection records, DCWP conducted the inspections we observed in accordance with the agency's policies and procedures.⁶

Control Weaknesses in Maintenance of Required Documentation for Diesel Buses

We found that DCWP's License Unit did not properly maintain some of the documentation required for the sightseeing bus license applications that is supposed to demonstrate that diesel-powered sightseeing buses operating in the City conform to applicable emissions standards. We reviewed license application files for 55 sightseeing buses, 11 of which were applications either for new licenses or for a "Change of Unit," the term DCWP uses for a bus that a licensed operator adds to its fleet. Ten of those 11 applications were for diesel-powered sightseeing buses, which required their operators to submit the USEPA Engine Conformity Affirmation package.⁷ Of the 10 applications for diesel-powered buses, only 3 contained the complete USEPA package with the Engine Conformity Affirmation, the manufacturer's letter, and the USEPA Certificate of Conformity; 7 of the 10 were incomplete. Although the required USEPA Engine Conformity Affirmation was located in the 7 files, we could not trace or match the listed bus engines to the required USEPA Certificates of Conformity, because the engine manufacturers' letters, which should provide the necessary statement linking each engine's serial number to the engine family covered by the relevant USEPA Certificate of Conformity, were missing. The absence of the required documents diminishes DCWP's ability to obtain

⁶ We did not observe DCWP's offsite inspections at sightseeing bus operators' facilities.

⁷ Under Local Law 41 of 2005, codified at NYC Administrative Code §24-163.6, "beginning January 1, 2007, any diesel fuel-powered sightseeing bus that is licensed pursuant to subchapter 21 of chapter 2 of title 20 of the administrative code and that is equipped with an engine that is over three years old shall utilize the best available retrofit technology" as verified by USEPA. Our sample of 55 bus applications contained 44 renewal applications that did not need to submit a USEPA Engine Conformity Affirmation, 10 new or change of unit applications that required the submission of USEPA affirmation, and one gas-powered bus exempt from the requirement.

reasonable assurance that the diesel-fueled sightseeing buses' engines listed on the Affirmation are in fact covered by the Certificates of Conformity submitted by the bus operators.

Controls Not in Place to Oversee Sightseeing Bus and Guide Operations

In addition, we found that DCWP does not conduct unannounced observations of sightseeing buses in operation, although City regulations give the agency the authority to do so.⁸ During unannounced observations of 20 sightseeing buses conducted on November 26, 2019, we observed that in 8 of the 20 buses that had a sightseeing guide, 7 guides did not display their badges as required by law during the tour. DCWP should put internal controls in place to ensure that licensed sightseeing buses and guides adhere to NYC Administrative Code requirements when operating on the streets.

In the absence of unannounced DCWP observations or other measures to enforce the badge requirement, DCWP and the public lack reasonable assurance that the individuals presenting themselves as licensed guides on sightseeing buses are in fact authorized by the City and bus operators to work on the buses. Without such assurance, DCWP incurs and exposes the public to the risk that unlicensed individuals can gain access to, and potentially take advantage of, customers of sightseeing buses operating in high-profile areas of the City. To strengthen its performance of its oversight responsibilities and ensure that sightseeing buses and guides are in compliance with the law, DCWP should regularly conduct unannounced observations.

Recommendations

1. DCWP should ensure that before it processes any application for a sightseeing bus operator's license that involves a diesel-fueled bus, specifically any application for a new license or a renewal of a license for the addition of a diesel-fueled bus or a change of a bus's engine, that it includes a complete USEPA Engine Conformity Affirmation package with all required attachments and should return all applications that lack any of the required documents.
2. DCWP should not issue a license if the applicant does not submit all required documents.
3. DCWP should properly maintain all required documents in its files for each applicant.

DCWP Response to Recommendations 1 through 3: DCWP agreed with Recommendations 1 through 3 stating, "DCWP agrees that licenses should not be issued to new applicants or renewal applicants seeking to add sightseeing buses to their roster or change a bus's engine, unless the applicant has submitted a complete USEPA Engine Conformity Affirmation package and all required documentation is in each applicant's file. To that end DCWP will update its operational manuals, provide refresher training to frontline staff, and assess what other tools are necessary for quality assurance."

⁸ NYC Administrative Code §20-245 requires a sightseeing guide to be in possession of his or her license at all times while working. NYC Administrative Code §20-247 further requires licensed guides while working to "wear on the left breast of his or her outer garment a badge . . . bearing his or her number and the date of expiration of his or her license." That section also makes DCWP responsible to furnish the badge and change its color each year. City rules authorize DCWP to enter and inspect the business premises of a licensee to verify compliance with the laws and rules DCWP is responsible to enforce. Rules of the City of New York Title 6, Chapter 1, §1-16.

4. DCWP should perform unannounced field inspections of sightseeing buses and guides to ensure compliance with applicable laws and regulations. If non-compliance is found, DCWP should take appropriate enforcement action, which may include issuing and prosecuting the appropriate notice of violation and levying the fine or ordering the applicable penalty, through loss of license, where warranted.

DCWP Response: “We appreciate the recommendation and will assess the feasibility, with our limited resources, of incorporating into our enforcement practices unannounced field inspections of sightseeing buses to enforce the badge requirement.”

Auditor Comment: Without unannounced DCWP field inspections, DCWP and the public lack reasonable assurance that the individuals presenting themselves as licensed guides on sightseeing buses are in fact authorized by the City and bus operators to work on the buses. We continue to recommend that DCWP implement this recommendation.

Audit Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope of this audit covers Fiscal Year 2018 (July 1, 2017 to June 30, 2018).

To obtain an understanding of the policies, procedures, and regulations that apply to the licensing and oversight of sightseeing buses and sightseeing guides by the DCWP, we reviewed DCWP’s internal policies, procedures, and reports, as well as criteria from Comptroller’s Directive #11 on Cash Accountability and Control. To gain an understanding of the responsibilities of the DCWP, we further reviewed the NYC Administrative Code, Title 20 Chapter 1: License Enforcement, which provides guidelines on how licenses are enforced. We also reviewed NYC Administrative Code, Title 20 Chapter 2: License, Subchapter 8: Sightseeing Guides and Subchapter 21: Sightseeing Buses.

To determine whether the sightseeing bus and guide license fees charged by the DCWP were appropriate, we obtained and reviewed the Licensing Application Checklist for sightseeing buses, updated as of August 14, 2018, and sightseeing guides, revised as of September 9, 2015. We compared the fees on the checklists to the fees established by NYC Administrative Code §§ 20-245 and 20-373. In addition, we analyzed DCWP’s Payment Analysis Report to confirm that the license fees paid were in line with the checklists.

To gain an understanding of the general licensing process, collection, and reporting of application fees and inspection requirements, we conducted walkthrough meetings with DCWP officials from the Licensing Unit, Finance Unit, and Enforcement Unit. In addition, to gain an

understanding of DCWP's ACCELA – ALBA system (ALBA), which is a software application for all licensing activities, we conducted walkthroughs with DCWP's Project Manager and Deputy Director of Licensing. To gain an overall understanding of the systems for depositing fees into the City's Treasury account and daily processes of the Finance Unit, we conducted walkthrough meetings with DCWP's Director of Fiscal Services, Executive Director of Finance, and the Finance Unit's Payroll Analyst.

To determine whether DCWP had adequate controls for collecting, recording, depositing, and reconciling daily cash receipts, we conducted an observation of the daily morning reconciliation process done by DCWP's Finance Unit. In addition, to reconcile the \$36.4 million in fees collected by DCWP with the \$36.4 million in fees reported in FMS, we obtained the DCWP's Fiscal Year 2018 Payment Analysis Report and the FMS Revenue Accounting Detail List Report, which we independently obtained. We then compared the amounts reported in FMS with the amounts deposited as reflected in each transaction in the Payment Analysis Report.

To determine whether DCWP deposited cash receipts on a timely basis and endorsed the checks and money orders as soon as they were received, we conducted an observation of DCWP's Licensing Center and observed that window clerks use a franking machine⁹ to endorse checks and money orders upon receipt. In addition, we conducted an observation of the daily morning reconciliation process at DCWP's Finance Unit. We also observed that DCWP uses Citibank's Image and Transaction Management System for daily deposits and reconciliation of its deposits to the cashier summary report.

To test the accuracy and validity of the data on rosters provided by DCWP, we used Excel's Sampling Function to randomly select 25 sightseeing buses and 50 sightseeing guide licenses and compared the information on the rosters to the hardcopy files or electronic files.¹⁰ To test for completeness, we randomly selected another set of 25 sightseeing bus licenses and 50 sightseeing guide licenses from the hardcopy files or electronic files and traced them back to the rosters provided. To further test whether the roster of sightseeing guides provided included all active sightseeing guides in Fiscal Year 2018, we performed a secondary completeness test. Specifically, we requested and obtained the Fiscal Year 2018 Exam Builder Snapshot¹¹, and then compared the individuals who passed the exam to the sightseeing guide roster.

To determine whether DCWP properly authorized and granted the appropriate license for sightseeing buses and guides, we obtained and reviewed the license and renewal checklists for the sample selected of 25 sightseeing buses and 50 sightseeing guides. After the initial sampling, we found that the population of sightseeing buses and guides provided by DCWP did not include the complete population for Fiscal Year 2018. We then applied the same method of using the Data Analysis Tool pack sampling function in Excel to randomly select two sets of samples, 25 for sightseeing buses and 50 for sightseeing guides from the updated lists again. In addition, we judgmentally selected another five sightseeing bus applications for new buses that were added in Fiscal Year 2018. We then reviewed the selected applications and renewals to ensure that DCWP processed them in accordance with the NYC Administrative Code, the Rules of New York City, and

⁹ A franking machine is a machine that scans and automatically endorses the back of the check.

¹⁰ As per DCWP's guidelines, the electronic files on ALBA are considered the same as hardcopy files. Within ALBA we are able to search for details, applications, renewals, and licenses, as well as other relevant information.

¹¹ Exam Builder Snapshot is a list of individuals that took the Sightseeing Guide Exam.

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DCWP's policies and procedures. In addition, we checked whether sightseeing guide applicants passed the exam and paid the \$50 nonrefundable exam fee.

To determine whether DCWP's Enforcement Unit properly performed inspections on each licensed sightseeing bus, we obtained and reviewed the Sightseeing Bus Compliance and Qualifying Checklists and conducted a site observation. In addition, we randomly selected 25 buses from the roster provided and retrieved the Certificate of Inspection from ALBA and verified whether inspections were performed as required.

In addition, to determine whether sightseeing buses and guides are currently conforming to DCWP's Sightseeing Bus Compliance Checklist and NYC Administrative Code Title 20 Chapter 2, §20-247, we conducted an unannounced field observation on sightseeing buses. We selected 3 of the 10 sightseeing bus companies that had the highest number of vehicles, and randomly chose to ride on 20 buses for our observation. We observed that each bus complied with certain guidelines detailed in the compliance checklist provided by DCWP. Also, we determined whether a sightseeing guide was present on the tour, and whether the guides had their badge displayed as required by NYC Administrative Code Title 20 Chapter 2, §20-247.

The results of the above tests, though not projectable to their respective populations, provide a reasonable basis to assess and to support our findings and conclusions about DCWP's oversight over sightseeing bus operators and guides.

The matters covered in this letter report were discussed with DCWP officials during and at the conclusion of this audit. A preliminary draft letter report was sent to DCWP officials and was discussed at an exit conference on March 25, 2020. On March 31, 2020, we submitted a draft letter report to DCWP officials with a request for comments. We received a written response from DCWP officials on April 14, 2020. In its response, DCWP agreed with three of the audit's four recommendations. In response to the fourth recommendation, that it perform unannounced field inspections of sightseeing buses and guides to ensure compliance with applicable laws and regulations, DCWP stated that it appreciates the recommendation and will assess the feasibility of incorporating it into its enforcement practices.

The full text of DCWP's comments is included as an addendum to this letter report.

Sincerely,



Marjorie Landa

c: Nicola Rozza, Executive Director of Finance, DCWP
Elvira Sabirova, Director of Fiscal Services, DCWP
Kenny Minaya, Chief of Staff, DCWP
Brady Hamed, Chief of Staff, Mayor's Office of Operations
Jeff Thamkittikasem, Director, Mayor's Office of Operations
George Davis III, Deputy Director, Mayor's Office of Operations
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Lorelei Salas
Commissioner

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April 14, 2020

Marjorie Landa
Deputy Comptroller for Audit
David N. Dinkins Municipal Building
1 Centre Street, Room 1100
New York, NY 10007

RE: Draft Letter Report on the Department of Consumer and Worker Protection's Licensing and Oversight of Sightseeing Bus Operators and Guides (FP19-101AL)

Dear Deputy Comptroller Landa:

Thank you for the opportunity to respond to your draft letter report dated March 31, 2020 regarding the Department of Consumer and Worker Protection's (DCWP) oversight of sightseeing bus operators and guides. Before I address the recommendations in your report, I'd like to first thank your office for acknowledging our ongoing efforts to maintain adequate fiscal controls and ensure that our inspections of sightseeing buses are conducted in a consistent and transparent manner. Rest assured that we will continue to follow the policies and procedures we have in place.

Your draft letter report contains four recommendations for DCWP. The first three will be treated collectively as they are related to our recordkeeping practices in connection with the licensing of sightseeing bus operators. DCWP agrees that licenses should not be issued to new applicants or renewal applicants seeking to add sightseeing buses to their roster or change a bus's engine, unless the applicant has submitted a complete USEPA Engine Conformity Affirmation package and all required documentation is in each applicant's file. To that end DCWP will update its operational manuals, provide refresher training to frontline staff, and assess what other tools are necessary for quality assurance.

Your fourth recommendation is for DCWP to conduct unannounced field inspections of sightseeing buses and guides to ensure compliance with applicable laws and regulations. This recommendation is based on your observation that seven sightseeing guides onboard sightseeing buses did not display their DCWP badges during the tour as required by law. We appreciate the recommendation and will assess the feasibility, with our limited resources, of incorporating into our enforcement practices unannounced field inspections of sightseeing buses to enforce the badge requirement.

If you require further information, please contact Kenny Minaya, Chief of Staff, at (212) 436-0219.

Sincerely,

A handwritten signature in black ink, appearing to be "Lorelei Salas".

Lorelei Salas
Commissioner